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9
10 **UNITED STATES DISTRICT COURT**
11
12 **CENTRAL DISTRICT OF CALIFORNIA**
13

14 Owda Darabuawad; All Thaer

Case No.:

15 Plaintiffs,

16 vs.

COMPLAINT FOR DECLARATORY
RELIEF AND FOR A WRIT IN THE
NATURE OF IMMIGRATION MANDAMUS

17 **United States Department of Homeland**
18 **Security; United States Citizenship and**
19 **Immigration Services; Alejandro Mayorkas,**
Secretary, Department of Homeland Security;
20 **Ur M. Jaddou,** Director, United States
21 **Citizenship and Immigration Services; Santa**
22 **Ana Field Office; Trung Vo,** Director of the
23 **Santa Ana Field Office; Christopher A. Wray,**
24 **Director of the Federal Bureau of Investigations.**

25 Defendants.

26 **INTRODUCTION**

27 1. This action is brought by Plaintiffs to compel Defendants and those acting under them to
28 take action on a pending I-485 Application to Register Permanent Residence or Adjust Status
which was submitted on July 9, 2021 and still has not received a decision on whether the
adjustment of status is approved or denied.

COMPLAINT FOR DECLARATORY RELIEF AND FOR A WRIT IN THE NATURE OF IMMIGRATION
MANDAMUS - 1

1 2. Plaintiff Owda Darabuawad is eligible to have his application for adjustment of status
2 adjudicated. Plaintiff Owda Darabuawad is the spouse of Plaintiff All Thaer and she submitted
3 an I-130 Petition for Alien Relative on his behalf on July 9, 2021. Concurrently, Plaintiff Owda
4 Darabuawad submitted an I-485 Application to Register Permanent Residence or Adjust Status.
5 Both the Petition and the Application were received on July 9, 2021.
6

7 3. On February 7, 2023, Defendant Santa Ana Field Office sent Plaintiff Owda Darabuawad
8 a notice that he and his spouse were to appear for an adjustment of status interview at that office
9 on March 7, 2023. (**Exhibit A- I-1797 Notice of Action, Interview Notice**). Plaintiffs All
10 Thaer and Owda Darabuawad did appear at the appointed time and location and provided
11 testimony in support of his adjustment of status application.
12

13 4. Since the date of the adjustment of status interview, Plaintiff Owda Darabuawad has not
14 received any notification from Defendant Santa Ana Field Office about when his adjustment of
15 status will be completed. According to the USCIS website, the processing time for adjustment
16 of status applications at the Santa Ana Field Office is 16.5 months, in this case, it has been over
17 30 months since Plaintiff Owda Darabuawad submitted his adjustment of status application.
18 (**Exhibit B – USCIS website print-out**).
19

20 5. On May 23, 2023, Defendant United States Citizenship and Immigration Services
21 approved Plaintiff All Thaer's I-130 Petition for Alien Relative. (**Exhibit C – I-797 Notice of**
22 **Action – Approval Notice**).
23

24 6. Defendants have violated the Administrative Procedures Act ("APA") by failing to
25 process and issue a final decision on Plaintiff's adjustment of status application which has been
26
27

1 pending for over 30 months. Plaintiffs seek to compel Defendants, through a writ of mandamus,
2 to take action and either grant or deny Plaintiff Owad Darabuawad's pending adjustment of
3 status application.
4

5 PARTIES

6 7. Plaintiff ALL THAER is the spouse of Plaintiff Owda Darabuawad and on July 9, 2021
7 she filed an I-130 Petition for Alien Relative on his behalf.
8

9 8. Plaintiff OWDA DARABUAWAD filed an I-485 Application to Register Permanent
10 Residence or Adjust Status on July 9, 2021. He testified in support of his application on March
11 7, 2023 at the designated field office.

12 9. Defendant UNITED STATES DEPARTMENT OF HOMELAND SECURITY
13 (hereinafter "DHS") is an agency of the United States government involved in the acts
14 challenged, employs the officers named as defendants, and includes the United States Citizenship
15 and Immigration Services, the Santa Ana Field Office and officers named as defendants in this
16 complaint.
17

18 10. Defendant UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
19 (hereinafter "USCIS") is an agency of the United States government under the DHS, overseeing
20 the officers named as defendants in this Complaint.
21

22 11. Defendant ALEJANDRO MAYORKAS (hereinafter "Director Mayorkas" is the Director
23 of the Department of Homeland Security. This suit is brought against Director Mayorkas in his
24 official capacity, as he is charged with the administration and enforcement of all immigration
25
26
27

1 and citizenship laws that are bound in the powers, duties and functions of the Department of
2 Homeland Security.

3
4 12. Defendant UR M. JADDOU is the Director of USCIS, the agency charged with
5 adjudicating Plaintiffs' adjustment of status application. This suit is brought against Director
6 Jaddou in her official capacity, as she is charged with oversight, administration and execution of
7 the immigration laws of the United States.

8
9 13. Defendant SANTA ANA FIELD OFFICE (hereinafter "Santa Ana Field Office") is an
10 office within USCIS with direct authority and responsibility to adjudicate Plaintiff Owda
11 Darabuawad's adjustment of status application.

12
13 14. Defendant TRUNG VO (hereinafter "Director Vo") is the director of the Santa Ana Field
14 Office. This suit is brought against Director Vo in his official capacity, as he is charged with
15 overseeing the adjudication of adjustment of status applications at the Santa Ana Field Office in
16 a timely manner and ensuring the efficiency of the officers employed.

17
18 15. Defendant CHRISTOPHER A. WRAY (hereinafter "Director Wray") is the Director of
19 the Federal Bureau of Investigations. This suit is brought against Director Wray in his official
20 capacity, as he is responsible for overseeing the background checks involved with immigration
21 matters.

22 JURISDICTION

23
24 16. The Administrative Procedure Act (hereinafter "APA") recognizes a right of judicial
25 review for any person "suffering legal wrong because of an agency action or aggrieved or
26 adversely affected by such action within the meaning of any relevant statutes." 5 U.S.C. § 702.

1 Plaintiffs suffered a legal wrong and continue to suffer because of the Defendants' failure to act
2 upon the pending immigrant visa application for indefinite periods of time.

3
4 17. The APA provides pursuant to 5 U.S.C. §706(1) that courts "shall compel agency action
5 unlawfully withheld." Courts have held that this provision eliminates court discretion to grant
6 relief once an agency has violated a statutory deadline. See Biodiversity Legal Foundation v
7 Badgley, 309 F. 3d 1166, 1178 (9th Cir. 2002) (noting that when "Congress has specifically
8 provided a deadline for performance ...no balancing of factors is required or permitted.").

9
10 18. This Court has jurisdiction over the present action pursuant to 8 C.F.R. § 204,
11 Immigration & Nationality Act §203 (b)(1)(C); 28 U.S.C. § 1131; 28 U.S.C. §1361, the
12 Mandamus Act; 28 U.S.C. §2201, the Declaratory Judgment Act; and 5 U.S.C. §701-706, the
13 Administrative Procedures Act. Costs and attorney fees will be sought pursuant to the Equal
14 Access to Justice Act, 5 U.S.C. §504 and 28 U.S.C. §2412(d), et seq. Relief is requested pursuant
15 to said statutes.
16

17 VENUE

18
19 19. Venue is proper in this Court, pursuant to 28 U.S.C. § 1391(e), which provides that in a
20 civil action in which each defendant is an officer or employee of the United States or any agency
21 thereof acting in his or her official capacity, or under the color of legal authority, or any agency
22 of the United States, the action may be brought in any judicial district in which a plaintiff
23 resides, so long as no real property is involved in the action. Plaintiffs reside in Bloomington,
24 California, which is located in the Central District of California. No real property is involved in
25 this action. Therefore, venue is proper in this Court.
26
27

EXHAUSTION OF REMEDIES

20. Plaintiffs have no administrative remedies. Plaintiffs have made numerous inquiries to Defendant USCIS to determine the status of the pending adjustment of status application, to no avail. There are no administrative remedies for neglect of duty.

CAUSE OF ACTION

21. Under 28 U.S.C. § 1361, the district courts shall have original jurisdiction of any action in the nature of a mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

22. Under the Administrative Procedures Act, a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

23. On July 9, 2021, Plaintiff All Thaer submitted an I-130 Petition for Alien Relative for her spouse Plaintiff Owda Darabuawad. On the same date, Plaintiff Owda Darabuawad submitted an I-485 Application to Register Permanent Residence of Adjust Status. Both applications were received and processed by Defendant USCIS and thereafter assigned to Defendant Santa Ana Field Office to adjudicate the adjustment of status.

24. On March 7, 2023, Plaintiffs attended the adjustment of status interview at the Defendant Santa Ana Field Office. The adjustment interview was successfully concluded and they were not instructed to return for another subsequent interview nor were they instructed that they had to submit additional documentation.

1 25. Since attending their adjustment of status interview, the Plaintiffs have not received
2 communication or information from the Defendant Santa Ana Field Office about how much
3 longer the adjudication process for the adjustment of status application would take. According
4 to the Defendant USCIS website, normal processing time at the Defendant Santa Ana Field
5 Office should take no longer than 16.5 months after the application has been submitted. In this
6 case, it has been over 30 months since Plaintiff Owda Darabuawad submitted his adjustment of
7 status application.
8
9

10 26. Plaintiffs have no recourse to resolve their long pending adjustment of status application
11 other than to bring their claim before this Court. Plaintiffs have attempted to ascertain the facts
12 about how much longer they will have to wait but Defendants are wholly unresponsive to their
13 concerns and have completely failed to address them.
14

15 **CLAIM FOR RELIEF**

16 27. Plaintiffs' claim in this action is clear and certain. Plaintiffs' reallege paragraphs 1
17 through 26, as if fully set forth, and, Plaintiffs are entitled to an order in the nature of mandamus
18 to compel Defendants to complete the processing of the pending application for Adjustment of
19 Status.
20

21 28. As a result of Defendants' failure to perform their duties, Plaintiffs have suffered, are
22 suffering, and will continue to suffer irreparable harm. Plaintiff Owda Darabuawad's life is
23 completely in the hands of the Department of Homeland Security during this interminable
24 pendency of his application.
25
26
27

1 29. In failing to act on these applications, Defendants are acting directly in contradiction of
2 the congressional intent, to promote family unity, for immediate relatives of United States
3 Citizens.
4

5 30. The Defendants, in violation of the Administrative Procedures Act and 22 C.F.R.
6 42.81(a), are unlawfully withholding or unreasonably delaying action on Plaintiff Owda
7 Darabuawad's adjustment of status application, and have failed to carry out the non-discretionary
8 adjudicative functions delegated to them by law with regard to his case.
9

10 31. The duty of the Defendants is non-discretionary, ministerial, and so plainly described as
11 to be free from doubt that mandamus is appropriate.
12

13 32. Plaintiffs have made numerous attempts to secure a final decision, all to no avail. Only
14 immigration service officers are able to make decisions on the approval or denial of an
15 adjustment of status application, leaving no adequate remedy. Accordingly, Plaintiffs have been
16 forced to pursue the instant action.
17

18 PRAYER

19 33. WHEREFORE, in view of the arguments and authorities noted herein, Plaintiffs
20 respectfully pray that the Defendants be cited to appear herein and that, upon due consideration,
21 the Court:
22

- 23 a. Accept jurisdiction and maintain continuing jurisdiction of this action;
- 24 b. Declare as unlawful the violation by Defendants of failing to act on a properly
25 filed application for adjustment of status;
26
27

- 1 c. Declare Defendants' failure to carry out the adjudicative functions delegated to
2 them by law with regard to Plaintiffs' case as agency action unlawfully withheld
3 and unreasonably delayed, pursuant to 5 U.S.C. § 706(1);
4
5 d. Issue a writ in the nature of mandamus pursuant to 28 U.S.C. § 1361 and 5 U.S.C.
6 § 706(1), compelling the Defendants to take action on Plaintiff Owda
7 Darabuawad's application for adjustment of status by either approving or refusing
8 said application, and if the application is refused, that the decision include
9 justification to preclude the sense of retaliation for having brought this lawsuit or
10 having exposed the Defendants' neglect;
11
12 e. Grant attorney's fees and costs of this suit under the Equal Access to Justice Act,
13 28 U.S.C. § 2412;
14
15 f. Grant such other relief at law and in equity as justice may require.

16 Dated this January 22, 2024

Respectfully Submitted,

17 /s/ Salah Khatib
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19 Salah Khatib, Esq.
20 Counsel for Plaintiffs
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**LIST OF EXHIBITS TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE
RELIEF AND FOR A WRIT IN THE NATURE OF IMMIGRATION MANDAMUS,
DARABUAWAD v. UNITED STATES DEPARTMENT OF STATE, et al.**

Exhibit	Description	Page
A	I-797 Notice of Action, Interview Notice	1
B	Case Processing Time for Santa Ana Field Office	2-3
C	I-797 Notice of Action, Approval Notice	4

EXHIBIT A

REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW

2/7/2023

Data Type:

FORM 1485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS

Applicant A Number:

A213459517

Receipt Number:

IOE0912570938

Received Date:

7/9/2021

Priority Date:

Page:

1 of 2

OWDA DARABUAWAD

986 S TEAKWOOD ST

BLOOMINGTON

CA

92316

A Number:

Receipt Number:

You are notified to appear before a USCIS officer regarding the application identified above and any supporting applications or petitions at the date, time, and place indicated below. Failure to appear for the scheduled appointment and/or failure to bring the below-listed items will result in the denial of your application. (8 CFR 103.2 (b)(1)(3))

To ensure visitor and employee health and safety within USCIS offices during the COVID-19 pandemic, please pay special attention to the sections entitled, "COVID-19 Safety Precautions" and "Who should come with you."

YOU MUST APPEAR FOR THIS APPOINTMENT. However, if you are under self-isolation or quarantine, are ill, have any symptoms of illness, or are at high risk of an underlying health condition and would like to reschedule your appointment, call the U.S. Citizenship and Immigration Services (USCIS) Contact Center at 5283 (TTY 1-800-767-1833) as soon as possible to reschedule your appointment. There is no penalty for requesting that your appointment be rescheduled.

COVID-19 Safety Precautions. To ensure the health and safety of all who enter USCIS offices, you must take the following safety precautions when arriving for your appointment:

- DO NOT arrive more than 15 minutes prior to your appointment time. You will not be permitted entry into the office until 15 minutes before your appointment time.
- Check www.cdc.gov for the current COVID-19 Community Level where you will appear for your appointment to understand the prevention steps for that level.
- Follow local USCIS guidance while inside USCIS facilities.
- You may have to answer health screening questions before entering.
- Bring a black or blue ink pen with you to your appointment.

Who should come with you? You may be limited in who may attend your appointment with you in person.

- If your eligibility is based on your marriage, your spouse must come with you to the appointment.
- If you do not speak English fluently and are eligible to take the appointment in a language other than English, you should arrange to have an interpreter come with you to the appointment or be available via phone. If you need a Sign Language Interpreter or Certified Deaf Interpreter, call the USCIS Contact Center at 5283 (TTY 5283) as soon as possible.
- Your attorney or authorized representative may come with you to the appointment or be available via phone.
- If your eligibility is based on a parent-child relationship and you are a minor, your petitioning parent(s) must come with you to the appointment.
- If you are a minor under 14 years old, a parent or guardian must come with you to the appointment.
- If you have a disability and have an individual who assists you, that individual may come with you.

YOU MUST BRING THE FOLLOWING ITEMS WITH YOU. (Please use as a checklist to prepare for your interview.)

- This Interview Notice and your Government-issued photo identification.
- If required, a completed Form I-693, Report of Medical Examination and Vaccination Record, and/or vaccination supplement in a sealed envelope (unless already submitted). Please see the Form I-693 Instructions for guidance on whether you need a complete medical examination, an updated vaccination supplement, or both.
- If required, a completed Form I-864, Affidavit of Support, with all required evidence (unless already submitted). Please see the Form I-864 Instructions for guidance on whether you need a Form I-864. Required evidence for each of your sponsors includes, but is not limited to, the following:
 - Federal income tax returns and W-2s, or certified IRS printouts, for the most recent tax year.
 - Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months.
 - Evidence of your sponsor's and co-sponsor's United States Citizenship or Lawful Permanent Resident status.
- All documentation establishing your eligibility for Lawful Permanent Resident status. This includes, but is not limited to, proof of status as an asylum seeker, or a refugee (nonimmigrant).
- Any immigration-related documentation ever issued to you, including any Form I-966, Employment Authorization Document (EAD), Form I-512, Arrival/Departure for Advance Parole, and Form I-571, Refugee Travel Document.
- All travel documents used to enter the United States, including Passports, Form I-512, Authorization for Advance Parole, Form I-571, Refugee Travel Document, and Form I-73, Arrival/Departure Record.
- Your Birth Certificate.

If you have questions, please call the USCIS Contact Center at 1-800-375-5283 (hearing impaired: TTY service at 1-800-767-1833).

34 Civic Center Plaza, 2nd Flr, Rm 2031

Santa Ana

CA

92701

ON (Date): 3/7/2023

AT (Time): 9:00 AM

EXHIBIT B

[Para tener acceso a este sitio en español, presione aquí \(/es\)](#)

Check Case Processing Times

Select your form, form category, and the office that is processing your case

Refer to your receipt notice to find your form, category, and office. For more information about case processing times and reading your receipt notice, visit the [More Information About Case Processing Times \(/more-info\)](#) page.

Form *

I-485 | Application to Register Permanent Residence or Adjust Status

Form Category *

Family-based adjustment applications

Field Office or Service Center *

Santa Ana CA

Get processing time

Processing time for Application to Register Permanent Residence or Adjust Status (I-485) at Santa Ana CA

80% of cases are completed within

16.5
Months

Check your case status (<https://egov.uscis.gov/casestatus/landing.do>) to track the status of an immigration application, petition, or request.

i What does this processing time mean?

We generally process cases in the order we receive them. This processing time is based on how long it took us to complete 80% of adjudicated cases over the past six months. Each case is unique, and some cases may take longer than others. Processing times should be used as a reference point, not an absolute measure of how long your case will take to be completed.

[Learn more about processing times \(/more-info\).](#)

When can I ask about my case?

Many routine factors impact how quickly a case is processed. We only allow inquiries for cases that are well outside the processing time listed above.

[Learn more about the Case Inquiry Date \(/more-info\).](#)

Enter your receipt date below to find out if you can contact us with questions.

When is your receipt date?

mm/dd/yyyy

Get Inquiry Date



Other case processing times resources

[Reducing Processing Backlogs \(/reducing-processing-backlogs\)](#)

[Frequently Asked Questions About Processing Times \(/processing-times-faqs\)](#)

[When to expect to receive your Green Card \(/expect-green-card\)](#)

[Processing information for the I-765 \(/i765\)](#)

[Affirmative Asylum Interview Scheduling \(/http://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-scheduling-bulletin\)](#)

[Administrative Appeals Office \(/https://www.uscis.gov/about-us/directorates-and-program-offices/administrative-appeals-office-aao/aao-processing-times\)](#)

[Historical Average Processing Times \(/historic-pt\)](#)

[Parole Processing \(/https://www.uscis.gov/humanitarian/humanitarian-parole/parole-processing\)](#)



EXHIBIT C

NAME (Last, first, middle) ALLI, EUGENIE		DATE OF BIRTH (DD-MM-YY) 1925-01-15	
PLACE OF BIRTH ALLI, EUGENIE		PLACE OF BIRTH ALLI, EUGENIE	
DATE OF DEATH 1925-01-15		DATE OF DEATH 1925-01-15	
ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED		DATE OF DEATH 1925-01-15	

HOW MUCH IS TOO MUCH?

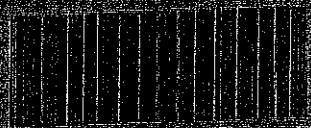
The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will, or eventually be, found to be eligible for a visa for admission to the United States, or for extension, change, or adjustment of status.

NOTICE: Although this application repetition has been approved, DSOIS and the U.S. Department of Homeland Security reserve the right to deny or withdraw your status and/or after making a decision on your case so we can ensure that you are compliant with applicable laws, rules, regulations, and other authorities. We may review public information and records online, others by hook the internet phone, conduct site inspections, interviews, and residence, or use other methods of confirmation. We will use the information obtained in our work, whether the information is from a confidential source or through secondary information, we will follow the law in determining whether it provides or admits to legal representation based on your form I-907. If you wish to have an opportunity to address that information before we make a final decision on your case, start proceedings.

Please see the additional information on this page regarding our privacy policy and how we protect your information.
USCIS encourages you to sign up for a USCIS online account to save time during application processing and the status inquiries.
www.uscis.gov/fileonline

National Benefits Center
U.S. CITIZENSHIP & IMMIGRATION SVC
P.O. Box 64003
Lexington, KY 40564

U.S. Contact Center: 1-800-451-7253



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